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OGC Has Reviewed

The Executive

20 October 1949

The Assistant General Counsel

Classification Act of 1949

1. The question has been presented by the Executive as to the position of this Agency under the Classification Act of 1949, and particularly whether this Agency will be limited under the provisions of Section 505 of that Act in establishing such positions as it desires in Grades 16, 17, and 18.

2. Section 202 (16) states that

"This Act...shall not apply to--

(16) the Central Intelligence Agency."

This exemption is complete and with the exception noted in paragraph 7, below, it is our opinion that the Central Intelligence Agency is in no way governed by any of the provisions of the Classification Act of 1949.

3. Attention is invited to Section 203 of the Act which states that the Civil Service Commission is authorized and directed to determine finally the applicability of Section 202 to specific positions, officers, and employees. It is our opinion, reenforced by informal comment by the counsel of the House Civil Service Committee, that Section 203 was in no way intended to limit the exemptions granted to agencies under Section 202. The House Committee Report which accompanies this Act points out, in connection with Section 203, that under the old law the Civil Service Commission had no authority to determine whether or not a position in the field service was subject to the Classification Act, whereas it could make initial decisions on that point in the departmental service. The effect of Section 203 is to make the Commission's authority uniform with respect to both departmental and field positions. It is therefore apparent that Section 203 merely authorizes the Commission to make final determination on questions of coverage and exemption on specific positions which may arise under Section 202. It is not the intention of this Section in any way to tamper with total specific exemptions granted to an agency by Section 202.

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4. Sections 505 (a) and (b) of the Classification Act provide for the establishment of GS Grades 16, 17, and 18, and state that no position should be placed in Grades 16 or 17 unless approved by the Commission, or in Grade 18 except by the President upon recommendation of the Commission. Furthermore, the number of positions in Grades 16, 17, and 18 are limited to 300, 75, and 25 respectively. The question arises as to whether CIA is bound by these restrictions. We conclude that it is not. The limitations under Section 505 do not state that there shall not be more than a certain number of these positions in the Government. It merely states that there shall only be a certain number of these positions in certain grades of the General Schedule. As CIA is specifically exempted from the provisions of this Act, we feel that it is likewise exempted from the limitations as to the number of positions in certain grades of the General Schedule.

5. In view of our conclusion that the limitations on numbers of positions which may be allocated to GS 16, 17, and 18 are not binding on CIA, we must consider whether CIA has authority to allocate any of its positions to those grades. In this connection attention is called to the following provision of law:

"There is authorized to be employed in each executive department, independent establishment, and the municipal government of the District of Columbia, for services in the District of Columbia or elsewhere, such number of employees of the various classes recognized by sections 661-663, 664-669, 670-672, 673, and 674 of this title, as may be appropriated for by Congress from year to year:..."
(5 USCA 43)

The enumerated sections in this provision are sections of the Classification Act of 1923, as amended. Section 1106 (a) of the Classification Act of 1949 states that whenever reference is made in any other law to the Classification Act of 1923 such reference shall be held and considered to mean the Classification Act of 1949. Therefore, in effect, 5 USCA 43 states that there is authorized to be employed in each executive department such number of employees of the various classes recognized by the Classification Act of 1949 as may be appropriated for by Congress from year

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to year. It is felt that sums appropriated by Congress for the Central Intelligence Agency may be expended for employees of all the various classes established by the Classification Act of 1949.

[REDACTED]

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6. Attention is called to Section 202 (31) of the Classification Act which states that the Act shall not apply to

"positions for which rates of basic compensation are individually fixed, or expressly authorized to be fixed, by any other law, at or in excess of the maximum scheduled rate of the highest grade established by this Act."

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In fact the House Committee Report points out that this Section is included to avoid the confusion caused by the so-called "P-9" grades for which Congress expressly authorized rates at or in excess of the ceiling rate of the Act; for this reason they are specifically exempted.

7. Section 1203 (d) (1) provides that for all pay computation purposes

"affecting officers or employees in or under the executive branch"

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basic annual rates of compensation shall be regarded as payment for employment during 52 basic administrative work weeks of 40 hours. It is felt that this Section applies to the Central Intelligence Agency and should be followed.

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cc: Budget Officer
Management Officer
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